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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ENRIQUE A. MONTEAGUDO,

12 Plaintiff,

13 vs.

14 LORNA A. ALKSNE, in her official capacity
15 as Supervising Judge, Family Court for
16 California Superior Court, San Diego County;
17 JUDITH MCCONNELL, in her official
18 capacity as Administrative Presiding Justice
19 of the California Court of Appeal, Fourth
20 District, Division One; TANI GORRE
21 CANTIL-SAKAUYE, in her official capacity
22 as Chief Justice of the California Supreme
23 Court,

24 Defendants.

CASE NO. 11-CV-1089 - IEG (BGS)

**ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS WITH PREJUDICE**

[Doc. No. 6]

21 Presently before the Court is Defendants Judge Lorna A. Alksne, Justice Judith
22 McConnell, and Chief Justice Tani Gorre Cantil-Sakauye's motion to dismiss Plaintiff's
23 complaint. For the reasons stated herein, the Court **GRANTS** Defendants' motion to dismiss with
24 prejudice.

25 **BACKGROUND**

26 This action arises out of Plaintiff's dissatisfaction with his state court custody proceedings.
27 California state courts are authorized to make initial child custody and visitation determinations
28 using the "best interest of the child" standard. *See In re Marriage of Brown & Yana*, 37 Cal. 4th

1 947, 955-56 (2006). California courts determine the “best interest of the child” by “setting the
 2 matter for an adversarial hearing and considering all relevant factors, including the child’s health,
 3 safety, and welfare, any history of abuse by one parent against any child or the other parent, and
 4 the nature and amount of the child’s contact with the parents.” *Id.*

5 After receiving an unfavorable custody ruling in state court, Plaintiff appealed the trial
 6 court’s order and argued that the court erred in failing to apply the “strict scrutiny” instead of the
 7 “best interest” standard in ruling on Plaintiff’s custody request. *See Enrique M. v. Angelina V.*,
 8 174 Cal. App. 4th 1148, 1150-54 (2009).¹ Plaintiff claimed that the use of the “best interest”
 9 standard in custody proceedings rather than the “strict scrutiny” standard violated Plaintiff’s
 10 fundamental right to parent his child in violation of the Due Process Clause of the Fourteenth
 11 Amendment. *See id.* at 1153-54. In a partially published opinion, the California Court of Appeal
 12 rejected Plaintiff’s constitutional claim and held that courts do not have to use the “strict scrutiny”
 13 standard in resolving custody related disputes between parents. *Id.* at 1157. Plaintiff appealed the
 14 Court of Appeal’s decision, and the California Supreme Court denied his petition for review. *See*
 15 *Enrique M. v. Angelina V.*, 2009 Cal. LEXIS 9118 (Cal. Aug. 26, 2009).

16 On May 18, 2011, Plaintiff filed the present civil rights action against Defendants Judge
 17 Lorna A. Alksne, Justice Judith McConnell, and Chief Justice Tani Gorre Cantil-Sakauye seeking
 18 declaratory and injunctive relief. [Doc. No. 1.] Specifically, Plaintiff requests that this Court
 19 require California courts to use the “strict scrutiny” standard in making child custody
 20 determinations, and Plaintiff also requests that the state court appellate opinion of *Enrique M. v.*
 21 *Angelina V.*, 174 Cal. App. 4th 1148, 1150-54 (2009) be depublished. [*Compl.* ¶¶ 61-63.]

22 **LEGAL STANDARD**

23 A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure tests
 24 the legal sufficiency of the claims asserted in the complaint. FED. R. CIV. P. 12(b)(6); *Navarro v.*
 25 *Block*, 250 F.3d 729, 731 (9th Cir. 2001). The court must accept all factual allegations pled in the
 26 complaint as true, and must construe them and draw all reasonable inferences from them in favor

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 28 ¹ Pursuant to Federal Rule of Evidence 201, the Court may take judicial notice of Plaintiff’s
 prior state court proceedings because they are matters of public record. *See* FED. R. EVID. 201; *Lee*
v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001).

1 of the nonmoving party. *Cahill v. Liberty Mutual Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996).
 2 To avoid a Rule 12(b)(6) dismissal, a complaint need not contain detailed factual allegations,
 3 rather, it must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*
 4 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim has “facial plausibility when the plaintiff
 5 pleads factual content that allows the court to draw the reasonable inference that the defendant is
 6 liable for the misconduct alleged.” *Ashcroft v. Iqbal*, --- U.S. ---, 129 S. Ct. 1937, 1949 (2009)
 7 (citing *Twombly*, 550 U.S. at 556).

8 However, “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’
 9 requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of
 10 action will not do.” *Twombly*, 550 U.S. at 555 (citation omitted). A court need not accept “legal
 11 conclusions” as true. *Ashcroft v. Iqbal*, 129 S. Ct. at 1949.

12 In addition, factual allegations asserted by pro se plaintiffs, “however inartfully pleaded,”
 13 are held “to less stringent standards than formal pleadings drafted by lawyers.” *Haines v. Kerner*,
 14 404 U.S. 519-20 (1972). Thus, where a plaintiff appears in propria persona in a civil rights case,
 15 the Court must construe the pleadings liberally and afford plaintiff any benefit of the doubt. *See*
 16 *Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 623 (9th Cir.1988).

17 Nevertheless, and in spite of the deference the court is bound to pay to any factual
 18 allegations made, it is not proper for the court to assume that “the [plaintiff] can prove facts which
 19 [he or she] has not alleged.” *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of*
 20 *Carpenters*, 459 U.S. 519, 526 (1983). Nor must the court “accept as true allegations that
 21 contradict matters properly subject to judicial notice or by exhibit” or those which are “merely
 22 conclusory,” require “unwarranted deductions” or “unreasonable inferences.” *Sprewell v. Golden*
 23 *State Warriors*, 266 F.3d 979, 988 (9th Cir.) (citation omitted), *amended on other grounds*, 275
 24 F.3d 1187 (9th Cir.2001); *see also Ileto v. Glock Inc.*, 349 F.3d 1191, 1200 (9th Cir. 2003) (court
 25 need not accept as true unreasonable inferences or conclusions of law cast in the form of factual
 26 allegations).

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2 DISCUSSION

3 **I. Defendants' Motion to Dismiss**

4 **A. Article III Standing**

5 Article III of the Constitution confines the federal courts to adjudicating actual "cases" and
6 "controversies." *Allen v. Wright*, 468 U.S. 737, 750 (1984). "Standing is a core component of the
7 Article III case or controversy requirement." *Barnum Timber Co. v. EPA*, 633 F.3d 894, 897 (9th
8 Cir. 2011).

9 In order to establish standing in federal court, a plaintiff must satisfy three elements:

10 First, the plaintiff must have suffered an "injury in fact" -- an invasion of a legally
11 protected interest which is (a) concrete and particularized; and (b) actual or
12 imminent, not conjectural or hypothetical. Second, there must be a causal
13 connection between the injury and the conduct complained of -- the injury has to be
14 "fairly . . . trace[able] to the challenged action of the defendant, and not . . . the
15 result [of] the independent action of some third party not before the court." Third,
16 it must be likely, as opposed to merely speculative, that the injury will be redressed
17 by a favorable decision.

18 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (citations omitted) (quotation marks
19 omitted).

20 Although Plaintiff's complaint details and criticizes his prior proceedings in state court,
21 Plaintiff alleges that he is only seeking prospective relief. [*Compl.* ¶ 4.] That is, Plaintiff is only
22 asking this Court to require that in the future California state courts use the "strict scrutiny"
23 standard in making custody determinations [*Id.*] However, Plaintiff does not have standing to
24 bring such a claim.

25 First, Plaintiff has not alleged a sufficient "injury in fact." Plaintiff argues that he will
26 suffer imminent and irreparable harm from the use of the "best interest" standard instead of the
27 "strict scrutiny standard" because he has future custody proceedings in state court. [*Pl.'s Opp'n* at
28 11-12; *Compl.* ¶¶ 10-11.] However, Plaintiff has not shown that if the California courts continue
to use the "best interest" standard and not the "strict scrutiny" standard, that this will result in
adverse rulings causing him injury. Plaintiff cannot make this showing because these future
rulings have not yet happened, and it is unknown what these courts will do in the future. It is
possible that in the future the state courts will rule in Plaintiff's favor. Accordingly, any

1 prospective injury that Plaintiff might suffer through the continued use of the “best interest”
 2 standard at this point would be “conjectural” or “hypothetical” and not “actual” or “imminent.”
 3 *See Lujan*, 504 U.S. at 560.

4 Second, Plaintiff has not shown that granting him his requested prospective relief would
 5 redress his injuries. Even if the Court were to require California state courts to use Defendant’s
 6 proposed “strict scrutiny” standard instead of the “best interest” standard, Plaintiff cannot show
 7 with any certainty that this would result in him obtaining more favorable rulings in state court.
 8 Use of the different standard might still result in Plaintiff obtaining adverse rulings in his future
 9 custody proceedings. Accordingly, the Court concludes that Plaintiff lacks standing to bring his
 10 claims for prospective relief.

11 **B. The *Younger* Abstention Doctrine**

12 *Younger* abstention is proper where (1) there are ongoing state judicial proceedings, (2)
 13 that implicate important state interests, and (3) there is an adequate opportunity in the state
 14 proceedings to raise federal questions. *Middlesex County Ethics Comm. v. Garden State Bar*
 15 *Ass’n*, 457 U.S. 423, 432 (1982). The “policy objective behind *Younger* abstention is to avoid
 16 unnecessary conflict between state and federal governments.” *United States v. Morros*, 268 F.3d
 17 695, 707 (9th Cir. 2001). *Younger* permits “state courts to try state cases free from interference by
 18 federal courts,” particularly where the party to the federal case may fully litigate his claim before
 19 the state court. *Hicks v. Miranda*, 422 U.S. 332, 349 (1975) (quoting *Younger*, 401 U.S. at 43).
 20 *Younger* abstention “contemplates the outright dismissal of the federal suit, and the presentation of
 21 all claims, both state and federal, to the state courts.” *Gibson v. Berryhill*, 411 U.S. 564, 577
 22 (1973). *Younger* “generally directs federal courts to abstain from granting injunctive or
 23 declaratory relief that would interfere with pending state judicial proceedings.” *Martinez v.*
 24 *Newport Beach City*, 125 F.3d 777, 781 (9th Cir.1997).

25 Plaintiff argues that there are not ongoing proceedings within the meaning of *Younger*
 26 because his prior custody dispute reached final judgment. [*Pl.’s Opp’n* at 5-6.] However, the
 27 Ninth Circuit has explained that proceedings are “ongoing” for the purposes of *Younger* abstention
 28 if a plaintiff in custody proceedings “seeks an order requiring procedural due process to be

1 observed in the future course of litigation.” *H.C. v. Koppel*, 203 F.3d 610, 613 (9th Cir. 2000).
 2 The complaint alleges that Plaintiff has ongoing custody proceedings involving a dispute over
 3 what high school his minor child will attend, and the complaint requests that state courts observe
 4 Plaintiff’s substantive due process rights in these future proceedings. [*Compl.* ¶¶ 10-11, 61, 63.]
 5 Accordingly, Plaintiff’s proceedings are ongoing within the meaning of the *Younger* abstention
 6 doctrine. *See Koppel*, 203 F.3d at 613.

7 Further, Plaintiff’s challenge to the standards used in state court custody proceedings
 8 implicates at least two important state interests. The Supreme Court has explained that “[f]amily
 9 relations are a traditional area of state concern.” *Moore v. Sims*, 442 U.S. 415, 435 (1979); *see*
 10 *also Sosna v. Iowa*, 419 U.S. 393, 404 (describing “domestic relations [as] an area that has long
 11 been regarded as a virtually exclusive province of the States”). “In addition, a state has a vital
 12 interest in protecting ‘the authority of the judicial system, so that its orders and judgments are not
 13 rendered nugatory.’” *Koppel*, 203 F.3d at 613 (quoting *Juidice v. Vail*, 430 U.S. 327, 336 n.12
 14 (1977)). “This is a particularly appropriate admonition in the field of domestic relations, over
 15 which federal courts have no general jurisdiction, and in which the state courts have a special
 16 expertise and experience.” *Id.*

17 Finally, Plaintiff has an adequate opportunity in his ongoing state proceedings to raise his
 18 constitutional claims. “Minimal respect for the state processes, of course, precludes any
 19 presumption that the state courts will not safeguard federal constitutional rights.” *Middlesex*, 457
 20 U.S. at 431. A federal court “should assume that state procedures will afford an adequate remedy,
 21 in the absence of unambiguous authority to the contrary.” *Pennzoil Co. v. Texaco, Inc.*, 481 U.S.
 22 1, 15 (1987). “As such, a plaintiff opposing abstention bears the burden of establishing that the
 23 pending state proceedings do not provide an adequate remedy for their federal claims.” *E.T. v.*
 24 *George*, 681 F. Supp. 2d 1151, 1176 (E.D. Cal. 2010) (citing *31 Foster Children v. Bush*, 329 F.3d
 25 1255, 1279 (9th Cir. 2003)). Should Plaintiff receive another adverse ruling in state court, he
 26 could bring his constitutional challenges to the use of the “best interest” standard instead of the
 27 “strict scrutiny” standard in those future proceedings. That Plaintiff has already previously raised
 28 his constitutional challenges in state court, *see, e.g., Enrique M. v. Angelina V.*, 174 Cal. App. 4th

1 1148 (2009), is proof that Plaintiff has an opportunity to raise these issues in his future state court
 2 proceedings. In addition, if Plaintiff is dissatisfied with his results in state court, Plaintiff can
 3 petition the United States Supreme Court through a writ of certiorari for review of the
 4 constitutionality of his state court proceedings. *See* 28 U.S.C. 1257(a).

5 In sum, the Court concludes that all three requirements of the *Younger* abstention doctrine
 6 are met in Plaintiff's action. Indeed, the Ninth Circuit has specifically held that a civil rights
 7 action alleging that a state court judge violated plaintiff's due process rights in a custody battle "is
 8 precisely the type of case suited to *Younger* abstention." *Koppel*, 203 F.3d at 613. Accordingly,
 9 Plaintiff's claims should be dismissed pursuant to the *Younger* abstention doctrine.

10 C. Judicial Immunity

11 A judge is generally immune from a civil action for damages, declaratory, injunctive and
 12 other equitable relief. *Moore v. Brewster*, 93 F.3d 1240, 1243 (9th Cir. 1996). This immunity
 13 applies "however erroneous the act may have been, and however injurious in its consequences it
 14 may have proved to the plaintiff." *Cleavinger v. Saxner*, 474 U.S. 193, 199-200 (1985) (quoting
 15 *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 347 (1872)). "Grave procedural errors or acts in excess
 16 of judicial authority do not deprive a judge of this immunity." *Schucker v. Rockwood*, 846 F.2d
 17 1202, 1204 (9th Cir. 1988). However, this immunity is limited in that it only protects "judicial
 18 acts." *See Stump v. Sparkman*, 435 U.S. 349, 360 (1978); *Moore*, 96 F.3d at 1244.

19 All three of the Defendants are state court judges. [*Compl.* at 1.] Plaintiff argues that he is
 20 seeking to enjoin activity that is administrative rather than adjudicative. [*Pl.'s Opp'n* at 9.]
 21 However, Plaintiff's complaint states that he is suing the three Defendants in their official
 22 capacity. [*Compl.* at 1.] In addition, the relief requested by Plaintiff asks the Defendants to apply
 23 Plaintiff's "strict scrutiny" standard in future proceedings, and also asks Defendant Chief Justice
 24 Cantil-Sakauye to depublish an appellate opinion from Plaintiff's prior proceedings, so it is no
 25 longer binding precedent in state court. [*Compl.* ¶¶ 61-63.] Plaintiff is clearly challenging judicial
 26 activities, and the doctrine of judicial immunity bars all of Plaintiff's claims against the Defendant
 27 judges. *See Moore*, 93 F.3d at 1243.

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2 **D. The *Rooker-Feldman* Doctrine**

3 In addition, to the extent Plaintiff is attempting to challenge his prior state court custody
 4 proceedings, any such claim would be barred by the *Rooker-Feldman* doctrine. “The
 5 *Rooker-Feldman* doctrine recognizes that federal district courts generally lack subject matter
 6 jurisdiction to review state court judgments.” *Fontana Empire Ctr., LLC v. City of Fontana*, 307
 7 F.3d 987, 992 (2002). Under this doctrine, a federal district court does not have jurisdiction to
 8 hear a direct appeal from a final state court judgment. *See Noel v. Hall*, 341 F.3d 1148, 1154 (9th
 9 Cir. 2003).

10 The *Rooker-Feldman* doctrine also applies to *de facto* appeals. *Id.* at 1158. “It is a
 11 forbidden *de facto* appeal under *Rooker-Feldman* when the plaintiff in federal district court
 12 complains of a legal wrong allegedly committed by the state court, and seeks relief from the
 13 judgment of that court.” *Id.* at 1163. “If a federal plaintiff asserts as a legal wrong an allegedly
 14 erroneous decision by a state court, and seeks relief from a state court judgment based on that
 15 decision, *Rooker-Feldman* bars subject matter jurisdiction in federal district court.” *Id.* at 1164.

16 Although the complaint alleges that Plaintiff is only seeking prospective relief, the
 17 complaint is very critical of Plaintiff’s prior state court proceedings and seeks to have one of the
 18 appellate opinions from his prior proceedings depublished, so it is no longer binding precedent.
 19 [*Compl.* ¶ 4, 11, 16-24, 61-63.] To the extent Plaintiff is attempting to challenge his prior state
 20 court proceedings, any such challenge would be a *de facto* appeal of those proceedings and would
 21 be barred by the *Rooker-Feldman* doctrine. *See Noel*, 341 F.3d at 1163-64.

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2 **CONCLUSION**

3 For the above reasons, the Court **GRANTS** Defendants' motion to dismiss. Because the
4 Court concludes that amendment of the complaint would be futile given the issues addressed
5 above, the Court **DISMISSES** Plaintiff's complaint **WITH PREJUDICE**. *See Reddy v. Litton*
6 *Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990). The clerk is directed to close the case.

7 **IT IS SO ORDERED.**

8 **DATED:** September 6, 2011

A handwritten signature in black ink, reading "Irma E. Gonzalez", written over a horizontal line.

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10 **IRMA E. GONZALEZ, Chief Judge**
11 **United States District Court**
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